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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,753	08/06/2001	Gregg Freishtat	16178.0001U1	9573

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Ballard Spahr Andrews & Ingersoll, LLP
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ATLANTA, GA 30309-3915

EXAMINER

GORT, ELAINE L

ART UNIT	PAPER NUMBER
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3687

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04/23/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/922,753	Applicant(s) FREISHTAT ET AL.	
	Examiner Elaine Gort	Art Unit 3687	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 69 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 69 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/20/08; 2/15/09; 10/29/08</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claim 69 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 69 recites only an insignificant extra-solution activity, or nominal recitation of a patentable subject matter which does not transform an unpatentable principle (e.g. Software) into a patentable process. Mere field-of-use limitations are generally insufficient to render an otherwise ineligible process claim patent-eligible, and “insignificant postsolution activity will not transform and unpatentable principle into a patentable process.” Diehr 450 U.S. 191-192. See Bilsky 88 USPQ2d 1394. Nominal recitations of structure in an otherwise ineligible method fail to make the method a statutory process under section 101. Benson 409 U.S. at 71-72. A general purpose computer is not a particular machine, and thus innovative software processes are unpatentable if they are tied only to a general purpose computer and an “incidental physical limitation, such as data gathering, field of use limitations, and post-solution activity are not enough to convert an abstract idea into a statutory process”. Langemyr Appeal 2008-1495, p 20-21.

The only recitation(s) of structure is/are recitation of a computer within a network of computers which is/are found to be insignificant extra-solution activity.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claim 69 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claim 69 recites the limitation "a by computer" in line 3. This appears to be a typo.

It is unclear in claim 69 lines 7, 9, 12, 17, 22, 31, 32 and 36 regarding "a computer". It is unclear if this is relating to the computer recited in line 3 or additional computers.

It is unclear in claim 69 line 18 regarding "the sales associate". It is unclear which sales associate is being referred to. There is no prior recitation of a singular sales associate only associates.

It is unclear in claim 69 line 24 what is meant by "who first chooses to assist the customer". It is unclear if the associate is selected because the associate chooses to assist or if the system is selecting an associate among more than one associate that chooses to assist the customer. Especially in light of the limitation in line 26 where it discusses if none of the associates choose to assist the customer. For purposes of this action it is assumed that if the associate chooses to assist the customer, the system selects them to work with the customer, otherwise an associate will be selected who must assist the customer.

Claim 69 recites the limitation "the customer profile information" in line 34. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claim 69, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Bunting et al. (US Patent 6,134,530) in view of Hung et al. (US Patent 6,760,429).**

Bunting et al. discloses the claimed method for selling, as best understood, including gathering customer and product information, using this information along with sales associated information to find the best associates, provide the best associates an opportunity to assist the customer and if these associates do not assist the customer after a predetermined time, one of the best associates is selected and must assist the customer, where a connected associate is provided the customer and product information to assist the call;

but is vague regarding how the customer, session, and product information, is entered into the system when the customer is interfacing the system via a web page; and where the associate is provided information previously determined to be effective in closing a sale given the selected sales associate's profile information.

Bunting et al. discloses that customer, session and product information is collected via a VRU and forwarded to the sales associates and that information about new products and services is provided.

Hung et al. teaches that it is known in the art of web based agent backed systems to gather website session information, product information, customer information, and web page content and multimedia content (construed by the Examiner to be “information previously determined to be effective in closing a sale given the selected sales associate’s profile information”) that is forwarded to agents/sales associate to provide information to the associate that would be useful in servicing the customer (for example see column 6, lines 19+). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method of Bunting et al. with the gathering of website session information, product information, customer information, and web page content and multimedia content and forwarding this information to a sales associate as taught by Hung et al., in order to provide information to the associate that would be useful in servicing the customer.

Response to Arguments

7. Applicant's arguments with respect to claim 69 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elaine Gort whose telephone number is 571/272-6781. The examiner can normally be reached on Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Gart can be reached on 571/272-3955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3687

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elaine Gort/
Primary Examiner, Art Unit 3687

Elaine Gort
Primary Examiner
Art Unit 3687

April 16, 2009